

NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

THE GOVERNMENT OF THE VIRGIN
ISLANDS, BUREAU OF INTERNAL
REVENUE,

Plaintiffs,

v.

WILLIAM M. LANSDALE, MARIANTHI
LANSDALE, LA ISLA VIRGEN, INC.,
MARINA PACIFICA OIL COMPANY, INC.,
AND LONESOME DOVE PETROLEUM
COMPANY,

Defendants.

Civ. No. 2001-157

EDWARD E. THOMAS, DIRECTOR, VIRGIN
ISLANDS BUREAU OF INTERNAL REVENUE,

Petitioner,

v.

LONESOME DOVE PETROLEUM CO., a
Texas Corporation, MARINA PACIFICA
OIL COMPANY, a California
Corporation,

Respondents.

Civ. No. 1992-0079

ATTORNEYS:

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For the plaintiff,

Boyd L. Sprehn, Esq.,
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For the defendants,

Joanne E. Bozzuto, Esq.
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Receiver.

MEMORANDUM

Moore, J.

William Landsdale and Marianthi Lansdale [the "Lansdales"] move this Court to order the receiver to submit a final accounting of the assets of Lonesome Dove Petroleum Company and to terminate the receivership for that corporation. The receiver's fifth report lists additional oil and gas leases that the corporation owns via a 1989 assignment from William Lansdale. The receiver requests that the Lansdales disclose certain documents that she believes would verify this ownership. The Lansdales contend that the receiver cannot add these oil and gas leases as assets of the receivership because of (1) the doctrine of claim preclusion under a settlement with a predecessor

receiver, (2) the expiration of the applicable statute of limitations, (3) the statute of frauds, and (4) the terms of the settlement agreement in the current case, Civ. No. 2001-157. The Lansdales also argue that, in any event, the disputed oil and gas leases do not belong to the corporation.

The receiver also updates the status of the current settlement agreement and renews her motion to compel, alleging that the Lansdales are improperly doing business in the corporation's name. Finally, the receiver moves this Court to authorize the corporation to make further payment to the plaintiff in Civ. No. 1992-0079, the Virgin Islands Bureau of Internal Revenue ["VIBIR"]. The Lansdales object to the receiver's requests, arguing that these matters should be arbitrated under the settlement agreement. For the reasons set forth below, this Court will deny the Lansdales' motion for termination of the receivership, refer the motion to compel and discovery requests to the magistrate judge, and defer ruling on any other motions until further discovery is taken.

I. BACKGROUND

A. The History of the Receivership

As the underlying facts of this case were extensively detailed in this Court's prior rulings, I need not rehash them

here. See *VIBIR v. Lansdale*, 172 F. Supp. 2d 636 (D.V.I. 2001). Instead, I will briefly summarize the relevant factual and procedural history. On February 28, 1991, this Court granted summary judgment in favor of the VIBIR, agreeing that the Lansdale corporations owed \$21,895,969.00 for unpaid taxes, interest, and penalties. See *La Isla Virgen, Inc. v. Olive*, Civ. Nos. 1986-263, 1988-012, and 1988-270 (D.V.I.) (Giles, J.), *aff'd*, 27 V.I. 462, 952 F.2d 1393 (3d Cir. 1991), *cert. denied*, 506 U.S. 817 (1992). In 1992, the director of the VIBIR petitioned this Court for the appointment of a receiver. See *Thomas v. Lonesome Dove, et al.*, Civ. No. 1992-0079 (D.V.I. 1992). As support for the petition, the VIBIR documented the expatriation of the Lansdales' corporate assets from the Virgin Islands. On September 15, 1992, this Court granted the petition by appointing a local attorney to be the tax receiver for the corporations.

The initial receiver, with the VIBIR's cooperation, located and secured assets over the next few years that rightfully belonged to the Lansdale corporations. On December 4, 1994, the receiver filed a complaint against the Lansdales on behalf of Marina Pacifica and Lonesome Dove [the "receiver litigation"]. See *Bowry v. William M. Lansdale*, Civ. No. 1994-156 (D.V.I. 1994). The receiver alleged that: (1) La Isla Virgen, Marina Pacifica

and Lonesome Dove were sham corporations designed to permit the Lansdales to conduct personal business transactions under the corporate veil, which resulted in improper financial gain and the defrauding of creditors; (2) the Lansdales used their fiduciary positions for their own personal benefit; (3) the Lansdales breached their fiduciary duties of good faith and fair dealing; and (4) the Lansdales acted "malicious[ly], willful[ly], and wanton[ly], and in total disregard of the rights and needs of the . . . corporations." (*Id.*) In 1996, a government official replaced the local attorney as tax receiver. In June 1996, this Court denied the VIBIR's motion to intervene in the receiver litigation against the Lansdales. In 1997, the receiver and the Lansdales reached a settlement in the receiver litigation ["receiver settlement"] which provided for the dismissal of the receiver's complaint against the Lansdales with prejudice. The Court accepted the settlement and dismissed the receiver litigation with prejudice on September 12, 1997.

The VIBIR independently filed this action against the Lansdales and their corporations seeking a judgment for the income tax assessment against La Isla Virgen. *See Government of the Virgin Islands v. William M. Lansdale*, Civ. No. 2001-157

(D.V.I. 1998).¹ The VIBIR's complaint restates the claims it had alleged as a proposed intervenor, namely: (1) it is entitled to the tax deficiency assessed against La Isla Virgen; (2) Marina Pacifica and Lonesome Dove had, by agreement and operation of law, assumed all of the liabilities of La Isla Virgen; (3) as La Isla Virgen, Marina Pacifica and Lonesome Dove were the alter egos of the Lansdales, the Lansdales are personally liable for any corporate tax obligations; and (4) the Lansdales are the nominees of the corporations and thus personally liable for their tax obligations. After extensive discovery, the Court ordered the VIBIR and the Lansdales to mediation. On November 15, 2002, the parties settled their claims ["VIBIR Settlement"]. This agreement included the following:

- 3.1 Receivership: Plaintiff will promptly request the Receiver to file a final accounting; request, with Plaintiff's full cooperation and support, that the Court discharge the Receiver; and authorize the Receiver to return full control of Lonesome Dove to the Lansdales along with all corporate records (financial and otherwise) of Lonesome Dove. The Lansdales will immediately thereafter cause Lonesome Dove to use its best efforts to sell all non-liquid assets owned by Lonesome Dove within sixty (60) days of the transfer date for the highest price available in the market with the sale price being subject to the approval of the Plaintiffs.

¹ The case had originally been filed in the Division of St. Croix as Civ. No. 1998-243. Because it is a St. Thomas matter, it was transferred to the Division of St. Thomas and St. John in 2001 and given its current number.

(VIBIR Settlement, ¶ 3.1.) With the Lansdales consent, this Court on November 20, 2002, granted VIBIR's motion to appoint the VIBIR's client representative, Joanne E. Bozzuto, as the present receiver of Lonesome Dove Petroleum Company. The receiver has subsequently filed approximately ten years of delinquent corporate tax returns, drafted security agreements, and marshaled Lonesome Dove's oil and gas assets into the receivership.

B. The Receiver's Fifth Report and the Parties' Pending Motions

Receiver Bozzuto now seeks to identify all of Lonesome Dove's assets so that the VIBIR can receive the proceeds pursuant to its settlement agreement with the Lansdales. In her fifth report, filed on February 13, 2004, she stated that the parties have not agreed which oil and gas properties and royalty interests belong to Lonesome Dove and which, if any, belong to William M. Lansdale as an individual. A synopsis of the basis for the dispute follows.

On November 13, 1989, William Lansdale executed an assignment of certain oil and gas interests to Marina Pacifica Oil Company [the "1989 Assignment"] (Receiver's Ex. 3,4,5) as listed in an attachment to the 1989 Assignment described as "Exhibit A." As part of its merger into Lonesome Dove, Marina Pacifica assigned certain oil and gas interests to Lonesome Dove

[the "1992 Assignment"] (Receiver's Ex. 6) as listed in an attachment to the 1992 also described as "Exhibit A."

Defendants contend that both the 1989 and the 1992 Assignments reference the same "Exhibit A" that they have submitted during the course of this litigation. (Defs.' Mem. at 14-15.) The receiver contends, however, that the two assignments do not refer to the same document. The receiver suggests that the actual "Exhibit A" attached to and referenced in the 1989 Assignment included at least thirty-four additional lease interests that William Lansdale transferred to Marina Pacifica Oil Company, and are assets of the receivership. The receiver further suggests that the Lansdales' version of the "Exhibit A" to the 1989 Assignment was actually executed in 1992 after the Third Circuit Court of Appeals' adverse ruling of December 1989 and this Court's March 1991 award of over \$20,000,000.00 in favor of the VIBIR.

Receiver Bozzuto supports her position with various corporate documents. First, the November 13, 1989 *Marina Pacifica Oil Company Minutes of Action Taken Without a Meeting* (Receiver's Ex. 3) state that the corporation paid William Lansdale's personal debt of \$ 1.85 million dollars to certain creditors in exchange for the transfer of "all of the oil and gas interests which he inherited from his mother [Arlyne Lansdale]."

Secondly, the 1991 Petroleum Industry Consultants, Inc.'s *Appraisal of Mineral Interest Held by [the Arlyne] Lansdale Estate* ["PIC Appraisal"] (Receiver's Ex. 9), a document prepared in anticipation of Marina Pacifica's sale of oil and gas interests back to William Lansdale, contains thirty-four leases not listed on the defendants' 1989 "Exhibit A." (Receiver's Ex. 10.) Furthermore, the receiver notes that the descriptions set forth in the document the defendants have produced as "Exhibit A" to the 1989 Assignment are not the bank asset numbers recited in the PIC Appraisal and the *Security Pacific National Trust Bank Department - Receivership of Arlyne Lansdale Oil and Gas Lease Inventory* [the "Security Pacific Inventory"]. (Receiver's Ex. 5.) The receiver thus believes that the Security Pacific Inventory, which the Lansdales still have not fully disclosed, is the actual document that was attached to the 1989 Assignment as "Exhibit A."

On March 12, 2004, the Lansdales filed this motion requesting a final accounting and termination of the Lonesome Dove receivership, as well as objecting to the receiver's fifth accounting. The Lansdales assert that the receiver's "claim" for additional oil and gas interests is barred by (1) claim preclusion, (2) the statute of limitations, (3) the statute of frauds, and (4) the time limits of the final settlement

agreement. The receiver responds that termination and final accounting are not appropriate because the Lansdales have refused to fully disclose the oil and gas interests and have continued to improperly divert corporate revenues.

The receiver's fifth report also updates the status of the VIBIR Settlement as follows: (1) the parties await the Lansdale's signature on the "boat slips" security agreement and (2) Lonesome Dove's oil and gas royalty interests are the only "non-liquid assets" remaining to be sold. The receiver's fifth report further moves this Court to authorize Lonesome Dove's payment of \$135,000.00 to the VIBIR. The payment, however, would draw on income attributed to one of the wells to which both parties claim ownership under the 1989 Assignment: Redbone Federal #2. Finally, the receiver also renews her motion to compel, filed October 16, 2003, because she alleges that the Lansdales opened a California bank account in the name of Lonesome Dove and were making deposits and disbursements from that account and that some unknown individual has filed payroll tax returns with the IRS on behalf of Lonesome Dove. The Lansdales argue that the receiver's requests must be arbitrated under the terms of the VIBIR Settlement.

II. DISCUSSION

A. The motion to terminate the receivership will be denied because the receiver's further investigation and reporting of Lonesome Dove's assets is not barred

The Lansdales argue that the receiver's claim to additional oil and gas interests is barred, *inter alia*, by the settlement of the receiver litigation under a theory of claim preclusion. The Lansdales seek to rely on this Court's prior ruling that the consent judgment in the receiver litigation prevented future receivers from bringing the same claims:

The consent judgment in *Knoepfel v. Lansdale* [receiver settlement] thus extinguished the receiver's claims, "includ[ing] all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose." *Id.* § 24(1). Accordingly, a new tax receiver would be precluded from raising in a subsequent suit any additional theories of liability in support of the same claims. Similarly, the rule against claim-splitting would generally bar the tax receiver from asserting any new claims in a subsequent suit, if the claims could have been brought in the first action. Hence, a court-appointed tax receiver would be precluded from bringing the claims stated in the VIBIR's complaint against the Lansdales, even though the VIBIR has raised additional claims and additional theories of liability.

172 F. Supp. 2d 636, 653 (D.V.I. 2001) (emphasis added). VIBIR argues that the receiver settlement does not preclude the successor receiver from fulfilling her receivership duties in accurately reporting the corporation's assets to this Court. It

only precludes the receiver from filing subsequent suits regarding the same or related claims.

I agree that the receiver settlement cannot obviate a successor receiver's obligation to uncover, marshal, and report corporate assets. This is not a "claim" subject to claim preclusion, but instead an instance where the receiver exercises the powers of her office in marshaling Lonesome Dove's assets. "The powers of a receiver of a corporation include . . . those reasonably or necessarily implied from the order of appointment." See 16 FLETCHER CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS § 7813. This Court appointed a receiver to "exercise such powers as are necessary or appropriate for the satisfaction of the income tax liability of Lonesome Dove including but not limited to the liquidation of the assets of the corporation." Implicit in this order was the receiver's "investigation and examination of the books and records of the corporation." (September 15, 1992 Order, Receiver's Ex. 16 at 5.) The receiver is not making a legal claim on behalf of the corporation but instead is seeking to fulfill her duty to investigate and examine Lonesome Dove's books and records to determine ownership of the disputed oil and gas leases. Therefore, the settlement of the earlier receiver

litigation does not preclude the present receiver's investigation.²

I will not terminate the receivership or order a final accounting, because I do not find that the receiver's investigation of the disputed oil and gas interests to be improper. Since the receivership will continue, I will refer the receiver's discovery requests and renewed motion to compel to the magistrate judge for resolution in the normal course. I defer ruling on the receiver's motion to authorize payment to the VIBIR until further discovery is taken on the ownership of Redbone Federal # 2.

III. CONCLUSION

The motion for termination of the receivership will be denied because the receiver's current investigation and marshalling of the corporate assets is not barred by claim preclusion or any of the other theories proposed by the Lansdales. I will refer the motion to compel and other discovery rulings to the magistrate judge and defer any other rulings until further discovery is taken.

² I do not find that the receiver's investigation and reporting of assets is barred under the other theories asserted by defendant, namely, the statute of limitations, the statute of frauds, or the terms of the VIBIR Settlement.

ENTERED this 23rd day of August, 2004.

For the Court

_____/s/_____
Thomas K. Moore
District Judge

ATTEST:
WILFREDO MORALES
Clerk of the Court

By:_____
Deputy Clerk

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For the defendants,

Joanne E. Bozzuto, Esq.
St. Thomas, U.S.V.I.
Receiver.

ORDER

For the reasons stated in the accompanying memorandum, it is
hereby

ORDERED, that the Lansdales' motion for final accounting and
termination of the receivership is **DENIED**, and it is further

ORDERED, that the receiver's motion to compel and her
discovery requests are referred to the magistrate judge for
ruling;

ORDERED, that ruling on any other motions is deferred until
further discovery is taken.

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Civ. No. 2001-157
Order
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ENTERED this 23rd day of August, 2004.

For the Court

_____/s/_____
Thomas K. Moore
District Judge

ATTEST:
WILFREDO MORALES
Clerk of the Court

By:_____
Deputy Clerk

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